

## SENATE BILL NO. 28

INTRODUCED BY S. DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT DECOUPLING THE FEDERAL SPECIAL DEPRECIATION ALLOWANCE FROM MONTANA INDIVIDUAL INCOME TAXES, CORPORATE LICENSE TAXES, AND CORPORATION INCOME TAXES; PROVIDING FOR AN ADDBACK OF 85 PERCENT OF THE AMOUNT OF THE SPECIAL DEPRECIATION ALLOWANCE IN COMPUTING MONTANA INCOME; ALLOWING THE DEDUCTION OF THE ADDBACK OVER A 5-YEAR PERIOD BEGINNING WITH TAX YEAR 2005; AMENDING SECTIONS 15-30-111, 15-30-136, 15-31-113, AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Federal special depreciation allowance -- addback -- deduction of addback.** (1) For tax years beginning after September 10, 2001, 85% of any amount of special depreciation allowance received by the taxpayer for assets placed in service after September 10, 2001, and before September 11, 2004, must be added back to gross income or, in the case of taxes imposed under 15-30-103, to adjusted gross income. As used in this section, "federal special depreciation allowance" means an amount received under the federal Job Creation and Worker Assistance Act of 2002, codified under section 168(k) and section 1400L of the Internal Revenue Code of 1986, as amended.

(2) The amount of the addback to gross income or adjusted gross income determined under subsection (1) is deductible from gross income or adjusted gross income for taxes imposed under 15-30-103 in the 5 tax years beginning after December 31, 2004, in five equal annual installments.

(3) For a small business corporation or other pass-through entity, the addback under subsection (1) and subsequent annual deductions of the addback under subsection (2) must be distributed to the partners, members, shareholders, or other owners in the same manner as income or loss is distributed for income tax purposes.

(4) The provisions of this section do not adjust or modify the adjusted basis of any asset.

**Section 2.** Section 15-30-111, MCA, is amended to read:

1           **"15-30-111. (Temporary) Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal  
2 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62,  
3 as that section may be labeled or amended, and in addition includes the following:

4           (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other  
5 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana  
6 under federal law;

7           (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26  
8 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred  
9 to in subsection (1)(a)(i);

10          (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a  
11 reduction of Montana income tax liability;

12          (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue  
13 Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

14          (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

15          (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the  
16 amount recovered reduced the taxpayer's Montana income tax in the year deducted; ~~and~~

17          (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
18 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
19 of the same estate or trust for the same tax period; and

20          (g) the amount of any addback of the federal special depreciation allowance as required under [section  
21 1(1)].

22          (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or  
23 amended, adjusted gross income does not include the following, which are exempt from taxation under this  
24 chapter:

25          (a) (i) all interest income from obligations of the United States government, the state of Montana, a  
26 county, municipality, or district, or other political subdivision of the state and any other interest income that is  
27 exempt from taxation by Montana under federal law;

28          (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26  
29 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred  
30 to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family

1 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated  
2 beneficiary;

3 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
4 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

5 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
6 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
7 of the same estate or trust for the same tax period;

8 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch  
9 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction  
10 is not provided for federal income tax purposes; ~~and~~

11 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income  
12 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the  
13 child and taxpayer meet the filing requirements in 15-30-142; and

14 (g) annual deductions of the addback of the federal special depreciation allowance under the provisions  
15 of [section 1(2)].

16 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall  
17 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
18 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
19 is effective.

20 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business  
21 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38  
22 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to  
23 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made  
24 in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small  
25 business corporation, the deduction must be made to determine the amount of income or loss of the partnership  
26 or small business corporation.

27 (5) Married taxpayers filing a joint federal return who are required to include part of their social security  
28 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
29 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement  
30 benefits when they file separate Montana income tax returns. The federal base must be split equally on the

1 Montana return.

2 (6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
3 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
4 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
5 absent from work due to the disability. If the adjusted gross income before this exclusion and before application  
6 of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal  
7 amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If  
8 eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000  
9 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this  
10 subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by  
11 reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

12 (7) Married taxpayers who file a joint federal return and who make an election on the federal return to  
13 defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,  
14 pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana  
15 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the  
16 same time period. The deferred amount must be attributed to the taxpayer making the conversion.

17 (8) An individual who contributes to one or more accounts established under the Montana family  
18 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the  
19 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000,  
20 for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions  
21 made by the spouses as being made by each spouse. The reduction in adjusted gross income under this  
22 subsection applies only with respect to contributions to an account of which the account owner, as defined in  
23 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or  
24 stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of  
25 contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of  
26 contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch.  
27 262, L. 2001.)

28 **15-30-111. (Effective on occurrence of contingency) Adjusted gross income.** (1) Adjusted gross  
29 income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal  
30 Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the

1 following:

2 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other  
3 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana  
4 under federal law;

5 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26  
6 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred  
7 to in subsection (1)(a)(i);

8 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a  
9 reduction of Montana income tax liability;

10 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue  
11 Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

12 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

13 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the  
14 amount recovered reduced the taxpayer's Montana income tax in the year deducted; ~~and~~

15 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
16 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
17 of the same estate or trust for the same tax period; and

18 (g) the amount of any addback of the federal special depreciation allowance as required under [section  
19 1(1)].

20 (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or  
21 amended, adjusted gross income does not include the following, which are exempt from taxation under this  
22 chapter:

23 (a) (i) all interest income from obligations of the United States government, the state of Montana, a  
24 county, municipality, or district, or other political subdivision of the state and any other interest income that is  
25 exempt from taxation by Montana under federal law;

26 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26  
27 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred  
28 to in subsection (2)(a)(i);

29 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and  
30 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

(r) annual deductions of the addback of the federal special depreciation allowance under the provisions of [section 1(2)].

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the



1 Montana return.

2 (6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
3 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
4 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
5 absent from work due to the disability. If the adjusted gross income before this exclusion and before application  
6 of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal  
7 amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If  
8 eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000  
9 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this  
10 subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by  
11 reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

12 (7) Married taxpayers who file a joint federal return and who make an election on the federal return to  
13 defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,  
14 pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana  
15 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the  
16 same time period. The deferred amount must be attributed to the taxpayer making the conversion.

17 (8) An individual who contributes to one or more accounts established under the Montana family  
18 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the  
19 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000,  
20 for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions  
21 made by the spouses as being made by each spouse. The reduction in adjusted gross income under this  
22 subsection applies only with respect to contributions to an account of which the account owner, as defined in  
23 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or  
24 stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of  
25 contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of  
26 contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch.  
27 262, L. 2001.)"

28

29 **Section 3.** Section 15-30-136, MCA, is amended to read:

30 **"15-30-136. Computation of income of estates or trusts -- exemption.** (1) Except as otherwise

provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; ~~and~~

(g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability; and

(h) the amount of any addback of the federal special depreciation allowance required under [section 1(1)].

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the tax year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended, including any annual deductions related to the recovery of the addback of the federal special depreciation allowance under the provisions of [section 1(2)];

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and

1 642(g) of the Internal Revenue Code of 1954, as amended;

2 (f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for  
3 by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal  
4 Revenue Code of 1954, as amended;

5 (g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal  
6 Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's  
7 final return;

8 (h) Montana income tax refunds or tax refund credits.

9 (3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

10 (a) any amount of income for the tax year currently required to be distributed to beneficiaries for the  
11 year;

12 (b) any other amounts properly paid or credited or required to be distributed for the tax year.

13 (4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

14

15 **Section 4.** Section 15-31-113, MCA, is amended to read:

16 **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income recognized  
17 in determining the corporation's gross income for federal income tax purposes and:

18 (a) including:

19 (i) interest exempt from federal income tax and exempt-interest dividends as defined in section  
20 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

21 (ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate  
22 income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may  
23 be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana  
24 income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to  
25 the stockholders pursuant to federal law;

26 (iii) the amount of any addback of the federal special depreciation allowance required under [section  
27 1(1)]; and

28 (b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation  
29 pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or  
30 renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection

1 (1)(a)(ii) of this section.

2 (2) The term "net income" means the gross income of the corporation less the deductions set forth in  
3 15-31-114.

4 (3) A corporation is not exempt from the corporation license tax unless specifically provided for under  
5 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from  
6 the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license  
7 tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according  
8 to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable  
9 year."

10

11 **Section 5.** Section 15-31-114, MCA, is amended to read:

12 **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the following  
13 deductions are allowed from the gross income received by the corporation within the year from all sources:

14 (a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance  
15 and operation of its business and properties, including reasonable allowance for salaries for personal services  
16 actually rendered, subject to the limitation contained in this section, and rentals or other payments required to  
17 be made as a condition to the continued use or possession of property to which the corporation has not taken  
18 or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the  
19 recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income  
20 derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

21 (b) (i) all losses actually sustained and charged off within the year and not compensated by insurance  
22 or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the  
23 trade or business. The allowance is determined according to the provisions of section 167 of the Internal  
24 Revenue Code in effect with respect to the taxable year. ~~All~~ Except as provided in [section 1], all elections for  
25 depreciation must be the same as the elections made for federal income tax purposes. A deduction is not  
26 allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase  
27 the value of any property or estate, and a deduction may not be made for any amount of expense of restoring  
28 property or making good the exhaustion of property for which an allowance is or has been made. A depreciation  
29 deduction is allowed for the annual deductions related to the recovery of the addback of the federal special  
30 depreciation allowance under the provisions of [section 1(2)]. A depreciation or amortization deduction is not

1 allowed on a title plant as defined in 33-25-105(15).

2 (ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined  
3 according to the provisions of 15-31-119.

4 (c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance  
5 for depletion and for depreciation of improvements. The reasonable allowance must be determined according  
6 to the provisions of the Internal Revenue Code in effect for the taxable year. ~~At~~ Except as provided in [section  
7 1], all elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and  
8 development costs and intangible drilling expenses for corporation license tax purposes must be the same as  
9 the elections made for federal income tax purposes.

10 (d) the amount of interest paid within the year on its indebtedness incurred in the operation of the  
11 business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness  
12 created for the purchase, maintenance, or improvement of property or for the conduct of business unless the  
13 income from the property or business would be taxable under this part.

14 (e) (i) taxes paid within the year, except the following:

15 (A) taxes imposed by this part;

16 (B) taxes assessed against local benefits of a kind tending to increase the value of the property  
17 assessed;

18 (C) taxes on or according to or measured by net income or profits imposed by authority of the  
19 government of the United States;

20 (D) taxes imposed by any other state or country upon or measured by net income or profits.

21 (ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school  
22 district, or municipality of this state.

23 (f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

24 (g) (i) except as provided in subsection (1)(g)(ii), charitable contributions and gifts that qualify for  
25 deduction under section 170 of the Internal Revenue Code, as amended.

26 (ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion  
27 of contributions made under this subsection.

28 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,  
29 81-7-118, or 81-7-201.

30 (2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market

1 value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological  
2 equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited  
3 postsecondary school located in Montana if:

4 (a) the contribution is made no later than 5 years after the manufacture of the donated property is  
5 substantially completed;

6 (b) the property is not transferred by the donee in exchange for money, other property, or services; and

7 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the  
8 property and representing that the use and disposition of the property will be in accordance with the provisions  
9 of subsection (2)(b).

10 (3) In the case of a regulated investment company or a fund of a regulated investment company, as  
11 defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be amended or  
12 renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue  
13 Code of 1986, as that section may be amended or renumbered, except that the deduction for dividends is not  
14 allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when  
15 earned by the regulated investment company. For the purposes of computing the deduction for dividends paid,  
16 the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as those sections may be  
17 amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends  
18 received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as those sections may  
19 be amended or renumbered."

20  
21 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an  
22 integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

23  
24 **NEW SECTION. Section 7. Effective date -- retroactive applicability.** [This act] is effective on  
25 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after  
26 September 10, 2001.

27 - END -